



# **TOWN OF TEWKSBURY ZONING BOARD OF APPEALS**

999 Whipple Road  
Tewksbury, MA 01876

Robert Dugan, Chairman  
Len Dunn, Vice Chair  
Gerald Kutcher  
**Associate Members:**  
Jaime Doherty

## **DEPARTMENT OF COMMUNITY DEVELOPMENT**

### **MEETING MINUTES September 25, 2014**

The meeting was called to order at 6:30 p.m. by Robert Dugan, Chairman, at the Pike House (temporary town hall). Present at the meeting were Len Dunn and Gerald Kutcher. Also in attendance was Melissa Johnson, Recording Secretary.

Jamie Doherty was not in attendance.

#### **Approval of Minutes – August 28, 2014**

**MOTION: Mr. Dunn made the motion to approve the August 28, 2014 meeting minutes as presented; seconded by Mr. Kutcher and the motion carried 3-0.**

#### **NEW HEARINGS**

**Edward and Rosemary O'Neill** for a variance under Section 4130, Appendix B and for a Special Permit under Section 3651 of the Tewksbury Zoning Bylaw for a proposed addition to come no closer than 6.86' from the sideline setback as shown on plans filed with this Board. Said property is located at **11 Evergreen Road**, Assessor's Map 7, Lot 73, zoned Residential.

Present was Edward O'Neill of 11 Evergreen Road. Mr. O'Neill explained that he would like to add a master bedroom with two car garage underneath. The master bedroom would be on the first floor of the home. Mr. O'Neill explained that his wife has had some medical issues and it is difficult for them to go up and down the stairs. Mr. O'Neill noted that they have lived in the home for 30 years, love the area, and have no desire to move. Mr. O'Neill explained that the original proposal was for a 25 foot addition; however, this has now been reduced to 24 feet.

Mr. O'Neill also noted that he has spoken with the Board of Health and they will be requiring him to hook up to town sewer as part of the project there will be an impact to the leaching field.

Mr. Dugan noted that the relief now being sought is 7.86' and Mr. O'Neill confirmed this.

Mr. Dunn inquired about the parcel located to the left of this property and asked if it is owned by the Town. Mr. O'Neill confirmed this and noted that the parcel has not been maintained in quite some time and is overgrown. Mr. Dunn asked if there are drawings for what is being proposed

and Mr. O'Neill noted that he does not have the plans at this time. Mr. Dunn asked what will be done with the chimney. Mr. O'Neill explained that he has not used the chimney in years and will be converting it to gas.

Mr. Dugan opened the hearing to the public and no one came forward to comment.

**MOTION:** Mr. Dunn made the motion to close both parts of the hearing; seconded by Mr. Kutcher and the motion carried 3-0.

**MOTION:** Mr. Dunn made the motion to grant Edward and Rosemary O'Neill a variance under Section 4130, Appendix B of the Tewksbury Zoning Bylaw for a proposed addition to come no closer than 7.86' from the sideline setback as shown on plans filed with this Board. Said property is located at 11 Evergreen Road, Assessor's Map 7, Lot 73, zoned Residential; seconded by Mr. Kutcher and the motion carried 3-0.  
DUGAN, DUNN, KUTCHER

**MOTION:** Mr. Dunn made the motion to grant Edward and Rosemary O'Neill a Special Permit under Section 3651 of the Tewksbury Zoning Bylaw for a proposed addition to come no closer than 7.86' from the sideline setback as shown on plans filed with this Board. Said property is located at 11 Evergreen Road, Assessor's Map 7, Lot 73, zoned Residential; seconded by Mr. Kutcher and the motion carried 3-0.  
DUGAN, DUNN, KUTCHER

**Route 38/Smith Realty Trust** for a variance under Section 3511 and for a Special Permit under Section 3630 of the Tewksbury Zoning Bylaw to construct a 24' X 24' detached garage as an accessory structure as shown on plans filed with this Board. Said property is located at **1091 Main Street**, Assessor's Map 61, Lot 13, zoned Commercial.

Present was Attorney William Grammar, Mr. Andella, and the applicant, Wayne Smith of 1093 Main Street. Attorney Grammar provided the members with a modified plan showing a change in location of the proposed structure as well as a written statement of the applicant. Attorney Grammar noted that they are now requesting 10 foot side and rear setbacks and they have removed any variance requests for height and will now keep the structure under 20 feet. Attorney Grammar explained that they are seeking a special permit for a nonconforming lot. The structure will be a 24 x 24 detached garage with two 9x7 front doors and no side doors, windows, or attic.

Mr. Dugan asked what the height will now be and Mr. Andella explained that the maximum height will be 20 feet; likely 17 feet with 8 foot walls and a 6 pitch roof.

Attorney Grammar explained that this parcel is located adjacent to Bernard's Jeweler's and Anderson Flooring which has an "L" shape to the lot. There is an existing warehouse/garage structure located behind Smitty's Liquors that is higher than this proposed structure and it will not be visible to the neighborhood. Attorney Grammar noted that there is an existing shed structure to the left of the building that will be removed.

Mr. Dugan asked if Mr. Smith is the owner of the liquor store as well as the residential apartments and Mr. Smith confirmed this. Mr. Dugan asked how this is an accessory building for a liquor store and what it will be used for. Attorney Grammar explained that it will be storage for the liquor store and residential apartments. Mr. Dugan asked if it will be heated and Attorney Grammar stated that it will not be heated.

Mr. Dunn asked what the garage will look like. Mr. Andella explained that this is still being determined, but it will be a wood structure and will blend in with the existing structure.

Mr. Dugan requested photographs of what is being proposed. Attorney Grammar provided the Board members with a “generic plan” and explained that it shows the basic structure that is being proposed, but it will not have windows.

Mr. Dugan noted that the Board is in receipt of correspondence from the Planning Board expressing their concerns with a metal structure in the overlay district. Attorney Grammar explained that the existing shed is metal and will be removed.

Mr. Dugan explained that under Section 3630, the applicant is requesting the Board to determine that the structure will not be more detrimental. As a result, Mr. Dugan would like to see exact plans for what is being proposed and also conduct a site walk to view the property.

Mr. Dugan opened the hearing to the public.

Edward Johnson, Building Commissioner, came forward and explained that the town has some concerns regarding this property as the existing metal structure is in violation; the applicant has been cited for this. Mr. Johnson explained that originally the proposal was for a metal shed and this may be where some of the confusion with the Planning Board is coming from. Mr. Johnson suggested it be made a condition that the existing metal structure be removed and that the proposed building be wood and not metal. Mr. Johnson noted that his other concern was the height; however, this has been addressed by the applicant with their withdrawal for a variance request.

Mr. Dugan noted that he would prefer to see prints in order to determine whether this will be more detrimental or not and asked if it is known what will be constructed. Mr. Andella explained that it will be a 24 x 24 wood sided structure, painted white, with two 9 x 7 doors on the front with no windows and a 6 pitch roof. The structure will have a colonial look and will blend in with the neighborhood. Mr. Andella noted he will provide the plans to the building department.

Attorney Grammar noted that Mr. Smith lives in one of the two apartments above.

Mr. Dugan suggested that in the future plans be provided as it is difficult for the Board to determine if something is not more detrimental without seeing what it will look like.

**MOTION: Mr. Dunn made the motion to close both parts of the hearing; seconded by Mr. Kutcher and the motion carried 3-0.**

**MOTION:** Mr. Dunn made the motion to grant Route 38/Smith Realty Trust a Special Permit under Section 3630 of the Tewksbury Zoning Bylaw to construct a 24' X 24' detached garage as an accessory structure as shown on plans filed with this Board. Said property is located at 1091 Main Street, Assessor's Map 61, Lot 13, zoned Commercial, the building shall be a 24 x 24 wood structure painted white with a 6 pitch roof and two 9 x 7 garage doors with no glass, the roof on the proposed structure shall be the same color as the existing building, the existing metal shed shall be removed; seconded by Mr. Kutcher and the motion carried 3-0.  
**DUGAN, DUNN, KUTCHER**

## **CONTINUED HEARINGS**

**Dinis M. Oliveria** as a party aggrieved for a review of a decision made by the Building Inspector in a letter dated April 16, 2014 as filed with this Board. Said property is located at **199 Marston Street**, Assessor's Map 19, Lot 31, zoned Residential.

Mr. Dugan noted that the Board is in receipt of correspondence from the applicant requesting to withdraw this matter without prejudice.

Mr. Dugan asked if Mr. Johnson can provide any other additional information on this matter. Mr. Johnson explained that this matter was a slaughter house violation. The Attorney's have worked out an agreement and the applicant has complied with the Board of Health and will be complying with the building permit. Mr. Dugan asked if the problems have been corrected and Mr. Johnson explained that they are working on addressing the issues.

**MOTION:** Mr. Dunn made the motion to withdraw **Dinis M. Oliveria** as a party aggrieved for a review of a decision made by the Building Inspector in a letter dated April 16, 2014 as filed with this Board. Said property is located at **199 Marston Street**, Assessor's Map 19, Lot 31, zoned Residential without prejudice; seconded by Mr. Kutcher and the motion carried 3-0.  
**DUGAN, DUNN, KUTCHER**

**Oscar Torres, Trustee, OAT Realty Trust** as a party aggrieved for review of a decision made by the Building Inspector in a letter dated May 13, 2014 as filed with this Board. Said property is located at **352 Main Street**, Assessor's Map 22, Lot 24, zoned Commercial.

Mr. Dugan noted that the Board is in receipt of correspondence from the applicant requesting to withdraw this matter without prejudice.

Mr. Dunn asked if this is the property that was being used for 3 or 4 apartments. Mr. Johnson explained the property was being used for 4 apartments and the applicant has stated that he would like to go through the permitting process to allow for the apartments. Town Counsel, Attorney Charles Zaroulis, continues to work with the applicant to resolve the matter.

**MOTION:** Mr. Dunn made the motion to withdraw Oscar Torres, Trustee, OAT Realty Trust as a party aggrieved for review of a decision made by the Building Inspector in a letter dated May 13, 2014 as filed with this Board. Said property is located at 352 Main Street, Assessor's Map 22, Lot 24, zoned Commercial without prejudice; seconded by Mr. Kutcher and the motion carried 3-0.  
**DUGAN, DUNN, KUTCHER**

**GRE Tewksbury Property, LLC and GRE Tewksbury Apartments, LLC, d/b/a Shawsheen Place** for (a) a determination and confirmation pursuant to 760 CMR 56.05(11) that the affordability "lock in period" set forth in the comprehensive permit issued by the Board on May 26, 1988 regarding the subject property has expired; and (b) modification of the Comprehensive Permit to address the affordability restriction. Said property is located at **11 Old Boston Road**, Assessor's Map 48, Lot 33, zoned Multi family, Commercial and Village Mixed Use Overlay Districts.

Mr. Dugan noted that the Board is in receipt of correspondence from the applicant requesting to continue this matter to November 20, 2014.

**MOTION:** Mr. Dunn made the motion to continue GRE Tewksbury Property, LLC and GRE Tewksbury Apartments, LLC, d/b/a Shawsheen Place for (a) a determination and confirmation pursuant to 760 CMR 56.05(11) that the affordability "lock in period" set forth in the comprehensive permit issued by the Board on May 26, 1988 regarding the subject property has expired; and (b) modification of the Comprehensive Permit to address the affordability restriction. Said property is located at 11 Old Boston Road, Assessor's Map 48, Lot 33, zoned Multi family, Commercial and Village Mixed Use Overlay Districts to November 20, 2014 at 6:30 p.m.; seconded by Mr. Kutcher and the motion carried 3-0.  
**DUGAN, DUNN, KUTCHER**

### **Old Business**

There was no old business.

### **New Business**

Mr. Dugan noted that there is still a vacant seat on the Board and that anyone interested should apply at the Board of Selectmen's office.

### **Adjournment**

**MOTION:** Mr. Dunn made the motion to adjourn; seconded by Mr. Kutcher and the motion carried 3-0.

***Approved: 10/30/14***

Approval of Minutes – August 28, 2014

## NEW HEARINGS

- 6:30 P.M.      Edward and Rosemary O'Neill** for variance under Section 4130, Appendix B and for a Special Permit under Section 3651 of the Tewksbury Zoning Bylaw for a proposed addition to come no closer than 6.86' from the sideline setback as shown on plans filed with this Board. Said property is located at **11 Evergreen Road**, Assessor's Map 7, Lot 73, zoned Residential.
- *Application packet dated 8/21/14.*
- 6:30 P.M.      Route 38/ Smith Realty Trust** for a variance under Section 3511 and for a Special Permit under Section 3630 of the Tewksbury Zoning Bylaw to construct a 24' x 24' detached garage as an accessory structure as shown on plans filed with this Board. Said property is located at **1091 Main Street**, Assessor's Map 61, Lot 13, zoned Commercial.
- *Application packet dated 9/5/14.*

## CONTINUED HEARINGS

- 6:30 P.M.      Dinis M. Oliveira** as a party aggrieved for review of a decision made by the Building Inspector in a letter dated April 16, 2014 as filed with this Board. Said property is located at **199 Marston Street**, Assessor's Map 19, Lot 31, zoned Residential.  
*(Applicant requesting to be withdrawn without prejudice.)*
- *Letter dated 9/25/14 fr Atty Borenstein re: requesting to withdraw application.*
- 6:30 P.M.      Oscar Torres, Trustee, OAT Realty Trust** as a party aggrieved for review of a decision made by the Building Inspector in a letter dated May 13, 2014 as filed with this Board. Said property is located at **352 Main Street**, Assessor's Map 22, Lot 24, zoned Commercial.  
*(Applicant requesting to be withdrawn without prejudice.)*
- 6:30 P.M.      GRE Tewksbury Property, LLC and GRE Tewksbury Apartments, LLC, dba Shawsheen Place** for (a) a determination and confirmation pursuant to 760 CMR 56.05(11) that the affordability "lock in period" set forth in the Comprehensive Permit issued by the Board on May 26, 1988 regarding the subject property has expired; and (b) modification of the Comprehensive Permit to address the affordability restriction. Said property is located at **11 Old Boston Road**, Assessor's Map 48, Lot 33, zoned Multi-Family, Commercial and Village Mixed Use Overlay Districts.  
*(Applicant requesting to be continued to November 20, 2014.)*
- *Letter dated 9/25/14 fr Atty Ryan Sullivan re: requesting to withdraw application.*